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Supreme Court, U.S.

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No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2001

Mike Bartoletti, Petitioner

v.

The Supreme Court of Montana, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether The Montana Supreme Court has decided an important question of federal law that has not been, but should be, settled by this Court.

2. Whether The Montana Supreme Court has decided an important Federal Question in a way that conflicts with relevant decisions of this Court.

3. Whether The Montana Supreme Court erred in holding that the General Railroad Right-of-Way Act of 1875 was dispositive of this case.

4. Whether The Montana Supreme Court's decision unlawfully deprives Mike Bartoletti of his property contrary to Articles V and XIV of the United States Constitution.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The parties to the proceedings in The Montana Supreme Court are: PHILIP JOHN MILANOVICH, Plaintiff and Respondent, vs. STOJAN JANICICH, MARY JANICICH; NATALIE JANICICH MARUSICH; LOUISE JANICICH OBRADOCICH; DELORES JANICICH; LOUIS JANICICH; IGNATZ MILLINACH; BLAZO (or BOB) KILBARDA; MICHAEL J. HENNESSEY; WILLIE D. HENNESSEY; THOMAS COUGHLIN, CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY; A&K RAILROAD MATERIALS, MIKE BARTOLETTI; DAN O'NEILL; and all other persons unknown claiming or who might claim any right, title, estate, or interest in lien or encumberance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, Defendants and Appellants.

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CASES

Chicago, Milwakee and St. Paul Railway Company of Idaho v. United States, 244 U.S. 351, 37 S. Ct. 625, 61 L.Ed. 1184. (1917)

Lilienthal v. Southern California Railroad Co. (1893) CCA - Cal., 56 F. 701

Sullivan v. Neel -, (1937) 73 P. 2d 206

Minneapolis, St. Paul and Pacific Railroad Co. v. Doughty (1908) 208 U.S. 251, 28 S. Ct. 291, 52 L.Ed 474.

U.S. CONSTITUTIONAL PROVISIONS

Article V
Article XIV

STATUTES

Mining Law Act of 1872. 30 USC § § 21-28

Right of Way Act of 1875 43 USC § § 934-939.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

Petitioner, Mike Bartoletti, respectfully prays that a Writ of Certiorari issue to review the judgment of The Supreme Court of Montana entered on April 18, 2001, and the Order denying the petition for rehearing entered on May 10, 2001. The Court's judgement affirmed the Judgement and Decree of Quiet Title of the Montana Second Judicial District Court of Silver Bow County entered on January 12, 2000. Said Judgement and Decree quieted the title of Plaintiff Philip John Milanovich to Lot 4, Section 30, T2N, R7W, MPM, and barred and restrained Defendant Mike Bartoletti from asserting any claim whatsoever in or to Lot 4 adverse to Milanovich.

OPINIONS BELOW

The Supreme Court of Montana has issued a judgement and opinion in this case which appears in the Appendix to this petition at page 1. The opinion has not been printed pursuant to the Court's order therein.

A copy of the judgment and decree of the Montana

Second Judicial District Court also appears in the Appendix at page 8.

STATEMENT OF JURISDICTION

Statement of the basis for jurisdiction in this Court is:

i. The judgment of The Montana Supreme Court was entered April 18, 2001.

ii. The Petition for Rehearing was denied May 10, 2001.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

The case involves Article V of the United States Constitution providing in part that "No person ... shall be deprived of ... property without due process of law...", and Article XIV, Section 1, to-wit: "... nor shall any State deprive any person of life, liberty, or property, without due process of law; ...".

The full pertinent provisions of Article V and Article XIV are printed in the Appendix at page 21.

STATEMENT OF CASE

In 1906, The Chicago, Milwaukee & St. Paul Railway Company of Montana (a Montana corporation and subsidiary of The Chicago, Milwaukee, St. Paul and Pacific Railroad Company) purchased a strip of land from the owners of the South Star Lode Mining Claim (an unpat-

ented lode mining claim located on April 30, 1901). This land was one hundred (100') feet wide, being (50') feet wide on each side of the centerline of the railway, as it was then located, over and across the South Star Claim. The Railroad paid the sum of Three Hundred Thirty-One and 50/100ths ($331.50) Dollars for this strip of land.

On October 10, 1908, the Railroad purchased from the claim owners two (2) parcels of land lying on either side of its right-of-way, containing eight and 31/100ths (8.31) acres, more or less. This purchase was made for the sum of Nine Hundred Fifty-Five and 56/100ths (955.56) Dollars.

The stated purpose of this acquisition was to allow the Railroad to excavate and carry away earth, rock, gravel, or other materials for use on or along the railway lines (emphasis added) of the Company.

The Milwaukee operated continuously over this line of railway until October 25, 1982, when it ceased rail operations and sought bankruptcy Court protection. On October 24, 1983, Richard K. Ogilvie, as Trustee in the bankruptcy proceeding, conveyed the subject property to A. & K. Railroad Materials, Inc. A. & K. Railroad then conveyed it to the Petitioner, Mike Bartoletti, on June 27, 1989.

Previously, on March 14, 1917, the United States issued a homestead Patent to Joseph A. Gearing, conveying three hundred ten and 81/100ths (310.81) acres in Section 30. This conveyance included all of Lot 4, wherein the South Star Lode was located. The Patent contained no reservation to the Milwaukee for the portion of its railway line in Lot 4, nor was there any mention of the South Star Lode Claim therein.

Thereafter, the Milwaukee continued operating over its line in Lot 4 until it ceased business in 1982. During

this period, all property taxes due on the trackage therein continued to be assessed solely to and paid by the Milwaukee.

On November 26, 1968, Philip John Milanovich acquired title to Lot 4 as a devisee in the line of succession under the patent granted to Joseph A. Gearing in 1917. In 1980, he had a survey of the property made by Alpha Engineers Montana, Inc. The survey plat showed the Milwaukee's trackage in Section 30. In addition, the land surveyor remarked:

> A thorough search of records has not revealed any evidence of a right of way for the railroad ... the original patent on lot 4 indicates no exceptions, so there is only a prescriptive easement for this portion of the Milwaukee Road.

This Survey was filed in the office of the Silver Bow County Clerk and Recorder on June 30, 1980, as Certificate of Survey No. 177A (COS #177A).

In 1986 and following review of COS #177A, the Clerk and Recorder increased the Milanovich assessment to ninety-nine and 13/100ths (99.13) acres from the previous assessments of eighty-eight and 32/100ths (88.32) acres. This change reflected assessment of the Milwaukee trackage to Milanovich as the owner thereof.

In 1989, the double assessment of the Railroad land in Section 30 was discovered and the acreage was removed from Milanovich's assessment on October 5, 1989. Dr. Milanovich objected to the reduction of acreage assessed to him and instituted a Quiet Title action on June 29, 1990, in the Montana Second Judicial District Court of Silver Bow County (hereafter District Court).

In the District Court the Federal Questions raised were:

1. Whether the General Right-of-Way Act of 1875 was applicable in determining the ultimate status of the Milwaukee's railway line in Lot 4 of Section 30;

2. The impact of the Mining Law Act of 1872 on the real property conveyances of 1906 and 1908; and

3. Whether the actions of the Milwaukee in continuing to operate its railway line adversely to Gearing and his successors and solely pay all taxes levied thereon for a period of sixty-five (65) years until ceasing operations in 1982 resulting in ownership through adverse possession under Montana law.

The trial depended principally on resolution of these issues, and the transcript of proceedings is replete with testimony in this regard. (Relevant portions are reproduced in the Appendix at page 53).

Judge Mizner, in his Judgment and Decree of Quiet Title entered January 12, 2000, determined that the Right-of-Way Act applied to the dispute. He found that the Milwaukee's total acreage in Lot 4 became the property of Milanovich upon the Milwaukee's cessation of railroad operations. Thereafter, Bartoletti filed a Notice of Appeal to The Montana Supreme Court on January 31, 2000.

In The Montana Supreme Court the Federal Question again involved whether the General Railway Act applied to the Milwaukee and its line of railway in Lot 4. Bartoletti urged that it did not because:

1. The Mining Act of 1872 expressly reserved lands valuable for minerals;

2. Certain actions required of a Railroad to obtain its benefits were not taken by the Milwaukee;

3. The Railroad acquired its land by payment of monies that were substantial sums in 1906 and 1908;

4. The right-of-way was not reserved in the Gearing Patent as would have been done had 43 U.S.C. §937 been complied with by the Milwaukee; and

5. The Milwaukee had ripened its title following the Patent by adverse possession under Montana law.

After the Supreme Court ruled for Milanovich on April 18, 2001, Bartoletti filed a Petition for Rehearing on April 27, 2001. In this Petition Bartoletti again urged that subsequent to the Gearing Patent the Milwaukee ripened its title by adverse possession and as sole payer of all taxes levied on its acreage in Lot 4.

Further, in his Petition Bartoletti pointed out that the Court's decision not only deprived him of the railroad trackage, but also of the six plus (6+) acres alongside the tracks. This acreage was well in excess of the two hundred (200') feet right-of-way available under the 1875 Act.

The Petition for Rehearing was denied by the Court on May 10, 2001.

REASONS FOR GRANTING THE WRIT

This case is the consequence of erroneous assumptions as to the law applicable to the transactions of the Milwaukee in acquiring and establishing its trackage and

other property rights in Lot 4 of Section 30. This is all contrary to the evidence before it, made by the District Court and then the Montana Supreme Court. Thus an ill-founded and unjust result has been produced.

The District Court in its Findings of Fact and Conclusions of Law held that the Milwaukee had no recorded right-of-way over Lot 4 in Section 30. At the trial the Court received in evidence Defendant Bartoletti's Exhibit A, which was the Milwaukee's Right-of-Way and Track Map of its trackage in Lot 4. The Map was dated June 30, 1915, and the two (2) conveyances to it were recorded in Books 87 and 97 of the property records of silver Bow County, Montana. A Bureau of Land Management (BLM) Plat showing the Milwaukee trackage in lot 4 was also received in evidence as Defendant's Exhibit B.

In its Findings the District Court also held that the Milwaukee's right-of-way was granted pursuant to 43 U.S.C. §934. This conclusion is directly contrary to fact and law. There is no evidence in the case that the Milwaukee, in any way, sought to receive the benefits of the General Right-of-Way Act of 1875. This point is confirmed by the Gearing Patent of March 14, 1917, which did not reserve a right-of-way to the Railroad therein as would have occurred, had the Milwaukee proceeded under 43 U.S.C. §937.

The Montana Supreme Court in its Opinion and Decision of April 18, 2001, affirming the District Court's Judgment, accepted the argument that the Right-of-Way Act controlled the case. This was despite all of the evidence to the contrary and the plain provisions of the Act itself.

Neither the District Court nor the Supreme Court acknowledged or discussed Defendant Bartoletti's position concerning the Milwaukee's title, which was negated in the 1917 Patent. Bartoletti contended that the title was

revived after five (5) consecutive years of the Milwaukee's continued operations over its trackage adversely to the Patentee and his successors, and also as the sole payer of all taxes assessed against such right-of-way. In so doing, both the District Court and the Supreme Court imposed the Right-of-Way Act upon an unwilling subject.

In Bartoletti's Petition for Rehearing it was clearly shown that his title resulted from the 1906 and 1908 conveyances, The Milwaukee's sixty (60) years of adverse possession and ownership under Montana law, and the later two (2) conveyances in his chain of title. Further, in the Petition for Rehearing it was strongly represented to the Court that the Right-of-Way Act is designed only for entities that desire its benefits and thus is not intended for involuntary imposition on railroads by the courts.

The Petition also suggested to the Supreme Court the constitutional problems presented in its awarding land in excess of the Right-Of-Way easement boundaries to Milanovich.

Bartoletti urges, most respectfully, that there can be no moral or legal justification or authority for such action.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that his Petition for a Writ of Certiorari be granted.

Respectfully submitted this 6TH day of Aug. 2001.

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